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IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Appellants, v. VOTE YES FOR ALASKA'S FAIR SHARE, Appellee.	Supreme Court No. **S-17818**

Trial Court Case No. **3AN-19-11106 CI**

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
HONORABLE WILLIAM F. MORSE

REPLY BRIEF OF APPELLANTS KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA AND THE STATE OF ALASKA, DIVISION OF ELECTIONS

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AS 15.45.180. Preparation of ballot title and proposition

(a) If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than 25 words, indicate the general subject of the proposition. The proposition shall give a true and impartial summary of the proposed law. The total number of words used in the summary may not exceed the product of the number of sections in the proposed law multiplied by 50. In this subsection, "section" means a provision of the proposed law that is distinct from other provisions in purpose or subject matter.

(b) The proposition prepared under (a) of this section shall comply with AS 15.80.005 and shall be worded so that a "Yes" vote on the proposition is a vote to enact the proposed law.

AS 40.25.100. Disposition of tax information

(a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person, including information under AS 38.05.020(b)(11) that is subject to a confidentiality agreement under AS 38.05.020(b)(12), is not a matter of public record, except as provided in AS 43.05.230(i)--(*l*) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405--43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes, or prohibit the publication of records, proceedings, and decisions under AS 43.05.405--43.05.499.

INTRODUCTION

Instead of addressing whether one sentence in the ballot summary—"This means the normal Public Records Act process would apply"—is biased or misleading, the sponsors of 19OGTX want to litigate the validity of the petition summary. They inappropriately impugn the character of the lieutenant governor by suggesting that he is unable to write a fair and impartial ballot summary simply because of his prior professional experience. And they continue to purposely conflate the language in the ballot summary with the language in the attorney general opinion to misleadingly support their assertion of bias and misinformation in the summary.

Voters have a right to know what this proposed bill would do.[1] The ballot summary says nothing more than what this Court squarely held: all public records in Alaska are subject to the Public Records Act.[2] The Court should defer to the lieutenant governor's summary,[3] reverse the superior court's decision granting the sponsors summary judgment, and direct the entry of judgment in favor of the State.

ARGUMENT

I. The Court should limit its review to only the language in the ballot summary.

This Court has never before invalidated a ballot summary based on language that does not actually appear in the summary. Nor has the Court ever looked to an elected official's prior work experience to presume that official acted with bias.

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1 *Alaskans for Efficient Gov't, Inc. v. State*, 52 P.3d 732, 735 (Alaska 2002); *Burgess v. Alaska Lieutenant Governor Terry Miller*, 654 P.2d 273, 276 (Alaska 1982).

2 *Griswold v. Homer City Council*, 428 P.3d 180, 186 (Alaska 2018).

3 *Alaskans for Efficient Gov't, Inc.*, 52 P.3d at 735; *Burgess*, 654 P.2d at 276 n.7.

If the sponsors prevail in their approach, challenges to ballot summaries would become fishing expeditions into the lieutenant governor's political thoughts and beliefs.[4] And the attorney general would be hamstrung in providing the lieutenant governor with pre-certification advice because—as the sponsors attempt to do in this case—that advice would needlessly be subject to judicial scrutiny.

Aware of his work history, Alaska voters elected the lieutenant governor into office, entrusting him with the responsibility to fulfill his constitutional oath and carry out his statutorily mandated duties—including crafting a true and impartial ballot summary. This Court has protected the will of the voters by refusing to substitute its judgment for that of the lieutenant governor when reviewing ballot summaries.[5] Even when reasonable minds may differ, and even when it could write a better ballot summary, the Court has repeatedly deferred to the lieutenant governor.[6] The thrust of these cases recognizes it is not the court's role to step into the shoes of the lieutenant governor and do his job for him, but rather to eliminate only those ballot summaries that are misleading or biased.[7]

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4 *See State ex rel. Kander v. Green*, 462 S.W.3d 844, 852 (Mo. Ct. App. 2015).

5 *Burgess*, 654 P.2d at 276 n.7.

6 *Id.*; *see also Alaskans for Efficient Government, Inc.*, 52 P.3d at 735. For these same reasons, the sponsors' repeated suggestions that the lieutenant governor had an obligation to accept their redline edits to the ballot summary lacks merit. [Ae. Br. 6 n.19, 10] The ballot summary is not a sponsors' statement; the lieutenant governor has an obligation to educate voters on the actual scope and import of the proposed bill. *Id.* at 735. He does not have an obligation to advocate on behalf of the sponsors.

7 *Burgess*, 654 P.2d at 276 n.7 (*citing with approval Say v. Baker*, 322 P.2d 317, 319 (Colo. 1958) (en banc) ("The purpose of the appeal is not to secure for the bill the best possible ballot title, but to eliminate one that is 'insufficient or unfair[.]'")).

The lieutenant governor's political beliefs on 19OGTX—whether he is its staunchest advocate or most vociferous opponent—have no relevance to the question at issue.[8] The attorney general's legal analysis on issues that are not addressed within the ballot summary—whether one believes it is correct or not—is similarly irrelevant. The Court should reject the sponsors' invitation to expand its role into that of a political arbiter and instead focus on whether the language in the ballot summary is misleading or biased.[9]

II. The lieutenant governor's ballot summary would accurately inform voters of the scope and legal import of the proposed initiative.

A ballot summary serves to educate voters, enabling them to "reach informed and intelligent decisions on how to cast their ballots."[10] It should provide enough information "to convey an intelligible idea of the scope and import of the proposed law,"[11] and may include accurately informing voters of the effects of the proposed bill,[12] especially when such information may give the elector serious grounds for reflection.[13]

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8 *See Kander*, 462 S.W.3d at 852.

9 *See* AS 15.45.180(a) (requiring the lieutenant governor, "with the assistance of the attorney general," to prepare a ballot title and proposition that gives a "true and impartial summary of the proposed law"); *Planned Parenthood of Alaska v. Campbell*, 232 P.3d 725, 729 (Alaska 2010) ("Those attacking the summary bear the burden to demonstrate *that it is* biased or misleading." (internal quotation marks omitted) (emphasis added)).

10 *Alaskans for Efficient Gov't, Inc.*, 52 P.3d at 735.

11 *Id.* (internal quotation marks omitted).

12 *Burgess*, 654 P.2d at 276.

13 *Alaskans for Efficient Gov't, Inc.*, 52 P.3d at 736.

Section 7 of the proposed initiative—titled "Public Records"—would change the law by making "[a]ll filings and supporting information provided by each producer" a "matter of public record." [Exc. 92] Currently, taxpayer information is not governed by the Public Records Act because it is "not a matter of public record" and "shall be kept confidential" except in certain circumstances.[14]

If 19OGTX is enacted, taxpayer information would become "public records" governed by the Public Records Act. Despite the sponsors' argument, this conclusion regarding the proposed bill's scope is not the "least-credible legal interpretation possible." [Ae. Br. 12] On the contrary, it is the only conclusion consistent with this Court's case law. Only two years ago, in *Griswold v. Homer City Council*, the Court reiterated that the "Public Records Act applies to all public records in the state."[15]

The sponsors' dispute with applying the Public Records Act focuses on the Act's exceptions;[16] however, there is more to the Act than exceptions to the general rule of disclosure. The Act dictates when records may be inspected, how much the public agency may charge for copies, and when and how much the public agency may charge for personnel costs associated with the request.[17] The Public Records Act allows for judicial review of final agency decisions.[18] In addition to having the right to appeal, a party aggrieved by an agency decision may seek to enjoin the denial, obstruction, or attempted

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14 AS 40.20.100(a).

15 428 P.3d at 186.

16 *See* AS 40.25.120(a) (stating exceptions).

17 AS 40.25.110(a)–(c).

18 AS 40.25.124.

objection of the right to inspect public records under the Act.[19] These provisions, as well as any agency implementing regulations, would apply to any request for taxpayer documents. Rather than being superfluous as the sponsors suggest [*see* Ae. Br. 19], the lieutenant governor's explanation provides voters with important information regarding the impacts of this proposed bill.

The sponsors do not dispute that the ballot summary may address the scope and legal import of the proposed initiative. [*See* Ae. Br. 16] And they concede that the initiative implicitly references the Public Records Act. [*See* Ae. Br. 17] They even suggest that the Court may look to Senate Bill 129[20] to see how the proposed initiative "was intended to be integrated into the Public Records Act." [Ae. Br. 23] The real disagreement is thus not over application of the Act at all; it is over the exceptions to the Public Records Act—something that the ballot summary does not address.

It is the ballot summary that the voters will see, and the ballot summary accurately informs voters of the legal import of this proposed initiative. The Court should defer to the lieutenant governor and reverse the superior court's decision to the contrary.

III. The sponsors are asking the Court for a pre-election review of the legality of their proposed law.

To support their claim that the ballot summary is biased and misleading, the sponsors pluck language from another document altogether and rewrite the ballot

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19 AS 40.25.125.

20 The sponsors worked with Senator Wielechowski and Legislative Legal to draft a bill that the sponsors felt was similar to the initiative for the legislature to consider. [Ae. Br. 23; *see also* Exc. 146–90]

summary to say something that it does not say. For example, on page 12 of their brief, the sponsors write:

> In Meyer's Second Summary, as in the First Summary, Meyer interposed the least-credible legal interpretation possible when he states, "This would mean the normal Public Records Act process would apply" and "most, if not all, of the tax documents" would remain confidential.

[Ae. Br. 12 (quoting Exc. 109 (ballot summary); Exc. 20 (attorney general opinion)] One would think, after reading the sponsors' appellee brief, that the attorney general opinion appears on the ballot summary, but it does not. The language in the attorney general opinion is not the crux of this appeal. And nowhere in the ballot summary does the lieutenant governor say that "most, if not all, of the tax documents would remain confidential." [*See* Exc. 109 (internal quotation marks omitted)]

Yet, the sponsors spend a majority of their brief arguing that the attorney general opinion is incorrect and that information that is "a matter of public record" cannot be confidential. [Ae. Br. 2–18; 20–24] They argue that this appeal "is over whether the filings [of the producers] would always be accessible to the public, as Vote Yes contends, or whether some filings would remain confidential, as the Department of Law initially advised." [Ae. Br. 20]

This is not the issue. The issue is whether tax documents, now a "matter of public record," would be subject to the Public Records Act. Whether the Department of Revenue may withhold some tax documents—despite them being a "matter of public record"—will be ripe only if this bill is enacted and the Department of Revenue receives a request for documents and makes a decision to withhold the documents.

The Court should decline the sponsors' invitation to prematurely opine on the prospective legal implications of their initiative.

But if the Court agrees with the sponsors and concludes that it must decide whether "a matter of public record" may nevertheless be withheld from disclosure to resolve whether the ballot summary is accurate, there is ample reason to conclude that at least some of the documents subject to section 7 may be withheld.

The sponsors maintain that these new "matter[s] of public record" cannot be confidential. [Ae. Br. 20–23] In other words, they contend that "a matter of public record" is automatically excluded from any exception to the Public Records Act as a matter of law and must be produced to the public. Not so—"one d[oes] not necessarily forfeit a privacy interest in matters made part of the public record. . . ."[21] When interpreting the Freedom of Information Act (FOIA)—the federal version of Alaska's Public Records Act—federal courts recognize that just because "information is already a matter of public record does not necessarily preclude a FOIA exception from applying."[22] In *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, the U.S. Supreme Court declined to order the FBI to release "rap-sheets" pursuant to a FOIA

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21 *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 763 n.15 (1989).

22 *Pinson v. U.S. Dep't of Justice*, 202 F. Supp.3d 86, 105 n. 6 (D.D.C. 2016) (citing *Reporters Comm. For Freedom of the Press*, 489 U.S. at 763 n.15; *ACLU v. U.S. Dep't of Justice*, 655 F.3d 1, 9 (D.C. Cir. 2011)).

request, even though much of the information contained in those rap-sheets were "matter[s] of public record."[23]

Here, the disclosure of "[a]ll filings and supporting documents provided by each producer" under the proposed bill's language would implicate both AS 40.25.120(a)(4) and Alaska's constitutional right to privacy. The Public Records Act provides that every person has a right to inspect a public record in the state, except "for records required to be kept confidential by a federal law or regulation or by state law."[24] Article I, section 22 of the Alaska Constitution provides: "The right of the people to privacy is recognized and shall not be infringed."[25] This Court has previously held that under appropriate circumstances, a statute requiring the disclosure of otherwise public information must still yield to the constitutional right to privacy.[26] Thus, the Department of Revenue may not disclose taxpayer information if the disclosure would violate the taxpayer's

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23 *Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 753 & 780.

24 AS 40.25.120(a)(4).

25 In their brief, the sponsors refer to Article VIII, section 2 of the Alaska Constitution, which requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." This reference is an attempt to misdirect the Court. Production taxes are imposed under Article XI, the taxing authority. Production taxes apply to *all* oil produced in Alaska, including for example oil on federal land. The interpretation of a public records provision for production taxes is completely unrelated to Article VIII, section 2 and the responsible development of state resources.

26 *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 980 (Alaska 1997).

constitutional privacy rights.[27] As explained below, this scenario might well occur under 19OGTX.

To determine "whether the disclosure of public records violates Alaska's constitutional right to privacy," the Court applies the following test:

> (1) does the party seeking to come within the protection of the right to [privacy] have a legitimate expectation that the materials or information will not be disclosed?
> (2) is disclosure nonetheless required to serve a compelling state interest?
> (3) if so, will the necessary disclosure occur in that matter which is least intrusive with respect to the right to [privacy]?[28]

It is difficult to answer whether the disclosure of taxpayer information would in fact violate a taxpayer's constitutional privacy rights without having a specific request for documents. But there is support to conclude that taxpayers have a legitimate expectation that at least some of their personal financial information would not be disclosed.

Since 1947, the Alaska Legislature included language in the Public Records Act exempting tax records from the definition of public records.[29] And this Court has already directed that the Department of Revenue, "in its information-gathering activities, must demonstrate a due regard for individuals' privacy rights."[30] Federal courts have similarly

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27 *See Int'l Ass'n of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1134 (Alaska 1999) (stating that the Municipality of Anchorage could not disclose the municipal employees' names and salaries—even if the records constitute "public records"—if the disclosure would violate the employees' constitutional privacy rights).

28 *Id.* (alterations in original; internal quotation marks omitted).

29 *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1320 n.13 (Alaska 1982).

30 *See State, Dep't of Revenue v. Oliver*, 636 P.2d 1156, 1168 (Alaska 1981).

recognized that, although not a fundamental right, "citizens are entitled to some protection from government disclosure of financial information."[31]

If enacted, 19OGTX would change Alaska's longstanding policy of protecting taxpayers' financial information and make large categories of sensitive financial information public. And, contrary to their assertions, Senate Bill 129 was not "substantially similar" to 19OGTX, at least as to the public nature of taxpayer records. [*See* Ae. Br. 23] Senate Bill 129 would have amended AS 43.05.230 to make the "information provided by a producer to the department *on a return* for the payment of oil production taxes . . . public information." [Exc. 146–47 (emphasis added)] In comparison, 19OGTX makes "[a]ll filings and supporting information" a matter of public record. [Exc. 92] If 19OGTX is enacted, the revenues, costs, and profits of each of the major international oil producers from each of the three largest and most profitable oil fields in Alaska will become a public record. Unlike the proposal in Senate Bill 129, the proposed initiative would make public sensitive commercial information like oil sales contracts, transportation costs, capital expenditures, losses, overhead, and property tax payments.[32]

The Department of Revenue cannot, however, disclose "public records" or "matters of the public record" if that disclosure would violate Alaska's constitutional right to privacy.[33] Therefore, if the documents "needed to be withheld," they "would be

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31 *Taylor v. United States*, 106 F.3d 833, 837 (8th Cir. 1997).

32 *See* 15 AAC 55.520(c) and (f).

33 *Int'l Ass'n of Fire Fighters, Local 1264*, 973 P.2d at 1134.

withheld." [*See* Exc. 104] Although this is not an issue that the Court needs to resolve, if it is so inclined, the sponsors' contention that all matters of public record are available to the public without exception is simply inaccurate.

IV. The lieutenant governor's ballot summary is consistent with the petition summary and the information provided to the petition signers.

Throughout their brief, the petition sponsors continue to attack the petition summary. They argue that the petition summary "grossly misrepresented" the initiative when it stated, "This would mean the documents would be reviewed under the normal Public Records Act process, and any information that needed to be withheld, for example for privacy or balance-of-interest reasons, would be withheld." [Ae. Br. 4 & 11] Instead of saying the Public Records Act process would apply, the sponsors contend that the petition summary should have said "This would mean the normal Public Records Act process would [not] apply." [Ae. Br. 17]

But if true, this puts in doubt the validity of the petition process. "The signature-gathering requirement . . . serves an important screening purpose; it ensures that only propositions with significant public support are included on the ballot."[34] The requirement "that signatures be gathered on a petition with an accurate and impartial summary prevents the state and the opponents of an initiative from spend[ing] large sums of money required when a proposed bill is put on the ballot if there is not sufficient public support for the initiative."[35]

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34 *Planned Parenthood of Alaska*, 232 P.3d at 729 (internal quotations omitted).

35 *Id.* (internal quotation marks omitted).

A deficient petition summary can be corrected for the ballot without recirculating the petition for new signatures only if the Court can conclude that the deficient petition summary did not contribute to petition-signer inadvertence.[36] To do so, the Court will consider whether the deficient summary "substantially changed—or misrepresented—the spirit of the measure."[37] It will also consider whether "it is evident from the content of the measure and the circumstances surrounding its proposal that the subscribers, fully understanding the proposal (as if they had been presented a proper summary), would prefer the measure to stand (in other words, go on the ballot), rather than to be invalidated in its entirety."[38]

If the sponsors are correct, then the petition summary did, in fact, substantially misrepresent the spirit of the measure. The subscribers were told one thing (the normal Public Records Act would apply), when the initiative did the complete opposite (exempt the documents from the Act altogether). It is not clear whether the subscribers—who were informed that the Public Records Act process would apply—actually wanted to support a petition that said it would not.[39]

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36 *Id.* at 730–31.

37 *Id.* at 733.

38 *Id.*

39 Despite timely filing suit to challenge the petition summary, the sponsors made the affirmative choice to go forward with the petition summary as written. [Exc. 1–12] They asked only that the court "[i]ssue an injunction requiring the Defendants to correct the prepared summary for the ballot . . . without requiring recirculation of the initiative." [Exc. 11]

A ruling in the State's favor on the ballot summary language would mean that the voters in the upcoming general election would receive a ballot summary that is consistent with the petition summary. It would thus ensure that there is sufficient public support for this initiative to appear on the ballot. But a ruling in the sponsors' favor could change the meaning of section 7, raising doubt as to whether the signatures gathered during the petition process satisfied the constitutional and statutory requirements.[40] To maintain the integrity of the initiative process, and adhere to the "standards that favor the people's right to enact laws by initiative *and* that favors voters' rights to be informed about proposed initiative measures," the Court should uphold the lieutenant governor's ballot summary.[41]

V. The superior court abused its discretion by denying the lieutenant governor the opportunity to revise the ballot summary.

By personally rewriting the ballot summary and prohibiting the lieutenant governor from carrying out his statutory duties and revising the summary in a way that complied with its order, the superior court substituted its own judgment for that of an elected official.[42] It concluded that "[t]he most impartial resolution of the meaning of section 7 and the impact it would have on public access to the producers' filings is to say nothing about the Public Records Act." [Exc. 304] But that is not the standard for reviewing ballot summaries. The superior court does not get to rewrite the ballot summary in a way that it believes is the "most impartial." Instead—even if reasonable

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40 *Planned Parenthood of Alaska*, 232 P.3d at 733.

41 *See id.* at 734 (emphasis added).

42 *Burgess*, 654 P.2d at 276 n.7.

minds may differ—the court must uphold the summary provided by the lieutenant governor unless it "cannot reasonably conclude that the summary is impartial and accurate."[43]

This standard of review affords appropriate deference to the will of the people who voted for the lieutenant governor to faithfully execute his statutory duties, as he has done here.[44] And it affords appropriate deference to the legislature's determination on who crafts ballot summaries.[45] This standard of review is thus not only appropriate in guiding a court's analysis in whether a ballot summary is lawful, but also in understanding the appropriate remedy for an unlawful ballot summary. In other cases where this Court has concluded that a ballot summary violated statutory requirements, the Court has either proposed revised language[46] or ordered the lieutenant governor to change the summary to comply with the Court's decision.[47] The superior court here refused to follow suit. By failing to grant the lieutenant governor the same opportunity in this case,

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43 *Planned Parenthood of Alaska*, 232 P.3d at 729.

44 *See Burgess*, 654 P.2d at 276 n.7.

45 AS 15.45.180(a) ("If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition.").

46 *Alaskans for Efficient Gov't., Inc.*, 52 P.3d at 737 (proposing revised language so that the disputed sentence "would read: 'The bill would repeal the requirements that before the state can spend money to move the legislature, the voters must *be informed of* the total costs as *would be* determined by a commission, and approve a bond issue for all bondable costs of the move'").

47 *Planned Parenthood of Alaska*, 232 P.3d at 734 ("Provided that the summary is corrected and provided that the PCA and the enforcement provisions implicated by the PNI are made available to the voters along with the PNI…"); *Alaskans for Efficient Gov't., Inc.*, 52 P.3d at 737 (reversing the superior court and remanding "to the lieutenant governor with directions to revise the summary as necessary to comply with this order").

the court "overlooked, misapplied or failed to consider a . . . decision" of this Court.[48] The State's motion for reconsideration was proper, and the superior court abused its discretion by failing to grant it.

To be sure, the State's motion rightfully sought to balance the court's concerns with the original ballot summary language with the lieutenant governor's critical responsibilities to Alaskan voters. This proposed initiative will be placed on the November 3, 2020 general election ballot. The Division of Elections must send ballots to the printer by September 2 to ensure that the Division meets all of its legal requirements. [*See* Unopposed Mot. for Expedited Consideration] To expedite this process, and allow the sponsors the ability to timely raise any objections to the proposed revisions, the State included its proposed revision in the motion for reconsideration, asking the superior court to make additional findings pursuant to Civil Rule 52(b). Given that this Court has previously proposed revised language for a ballot summary, granting the State's request was well within the superior court's authority.[49]

In its decision, the superior court determined that the ultimate meaning of the bill's language should be resolved post-enactment whether by the Department of Revenue or the courts in subsequent litigation. It implied that it would have upheld the ballot summary had the language merely pointed out the lack of clarity in section 7: "[The lieutenant governor] does not reveal that there is a dispute over the meaning of 'a matter of public record.' He does not indicate that it is unclear whether the exceptions to

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48 *See* Alaska R. Civ. P. 77(k).

49 *See Alaskans for Efficient Gov't, Inc.*, 52 P.3d at 737.

disclosure of public records, contained in AS 40.25.120, might apply to some of the producer's filings." [Exc. 303] The lieutenant governor's proposed revision does exactly what the superior court suggested. The new sentence would state: "This act does not specify the process for disclosure of the public records and whether any exceptions may apply." Without this sentence, the summary indicates only that filings and other information are "a matter of public record," strongly implying to voters that the filings and other information are unconditionally public information. This omission—that is, the omission that the Public Records Act applies and that exceptions to the Public Records Act *may* apply—is misleading. Indeed, it is misleading even according to the superior court's interpretation of the initiative.

The sponsors disagree with the proposed revision, doubling down on their interpretation that, if enacted, all taxpayer information must be made available for public dissemination without exception. [Ae. Br. 27–28] They incorrectly posit that the "most important goal" of the ballot summary is to present the sponsors' "'vision of taxation and transparency to the voters.'" [Ae. Br. 28 (quoting Exc. 304)]

But that is the goal of *their* summary, not the lieutenant governor's ballot summary. The lieutenant governor's ballot summary is supposed to give voters a true understanding of the legal implications of the initiative. The sponsors want voters to share their view of the initiative the sponsors crafted, and to prohibit the lieutenant governor from saying anything about the Public Records Act or anything about the lack of clarity in the proposed initiative. Yet, the sponsors' complete misunderstanding of the law, the purpose of a ballot summary and the lieutenant governor's role in it, and the

implications of the initiative, proves why legal explanation is needed. If the sponsors do not understand what the initiative does, how are the voters supposed to understand? The voters have a right to know the scope and legal import of this bill. If that is unclear or in dispute, the voters have a right to know about that uncertainty.

The superior court abused its discretion by denying the State's request without giving deference to the lieutenant governor's proposed revision.[50]

CONCLUSION

The sponsors have not met their burden of showing that the language contained within the ballot summary is misleading or biased. To find any support for their argument, they resort to inappropriately attacking the lieutenant governor's character and relying on language in an attorney general opinion that does not even appear in the ballot summary at issue. This information is not relevant to this analysis and there is no basis to conclude that the summary was misleading or biased.

For the foregoing reasons, the Court should reverse the superior court's decision granting summary judgment to the sponsors and direct the entry of judgment in favor of the State.

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50 *See Planned Parenthood of Alaska*, 232 P.3d at 729.